Johnson v. *Chambers,* 32 N. C. 287. Should it be inferred from the cases of *Perry* v. *Sulier,* 92 Mich., 72, and *Rankin* v. *Crane et al.,* 104 Mich. 6, that the Michigan rule is that a discharge by the magistrate is prima facie proof of want of probable cause, then this case distinctly negatives such a rule, being in harmony with *Apgar* v. *Woolston,* 43 N. J. L. 57, which says that "the failure of the proceedings against the plaintiff must be averred and proved; but such failure is not evidence either of the defendant's malice or of the want of probable cause in instituting them." *Stewart* v. *Sonneborn,* 98 U. S. 187; *Thompson* v. *Beacon Valley Rubber Co.,* 56 Conn. 493, 499; *Flickinger* v. *Wagner,* 46 Md. 580; *Cole v. Curtis et al.,* 16 Minn. 184; *Heldt* v. *Webster,* 60 Tex. 207; 19 Am. & Eng. Enc. of Law (2nd Ed.), 665. The court says that to allow a discharge of a magistrate to be prima facie evidence of want of probable cause amounts to this: "That every man who appears before a magistrate to give information of a criminal offense incurs the hazard of a prosecution against himself, should the magistrate happen to be ignorant, prejudiced, or corrupt. How many magistrates are there in obscure localities who are as little capable of determining what is probable cause for a criminal accusation as they are of explaining any of the phenomena of nature? How many do we find prejudiced against a public accuser, how many in sympathy with the accused?" This conclusion accords with the recent and well-reasoned decisions and is grounded upon good common sense.

MASTER AND SERVANT—ASSUMPTION OF RISK—EMPLOYERS' LIABILITY ACTS.—A statute of Colorado required railroad companies to block all frogs and switch rails. The defendant company failed to comply with the statute and, as a result, the plaintiff was injured. *Held,* that the statute did not deprive the company of the defense of assumed risk. *Denver & R. G. R. Co.* v. *Norgate* (1905), 141 Fed. Rep. 247. The same question was involved in *Diamond Block Coal Co.* v. *Cuthbertson* (1906), — Ind. —, 76 N. E. 1060, decided a few months later. Here the statute required mine owners to take certain precautions for the protection of the miners in their employ. In an action founded on the coal company's failure to conform to the statute, it was *held* that the defense of assumed risk was not open to the defendant.

The conflict among the courts as to what the effect of these so-called employers' liability acts has been on the common law doctrine of assumption of risk is well brought out by the two cases above. The *Norgate* case, which is directly opposed to *Narramore* v. *Cleveland, etc., Ry. Co.,* 96 Fed. 298, 37 C. C. A. 499, 48 L. R. A. 68, discusses that case at length and endeavors to point out that the reasoning in the *Narramore* case is unsound. The question is discussed in 2 LABATT, MASTER AND SERVANT, §§ 649 and 650, also in detail in Chap. 37. The *Diamond Coal Co.* case, so far as the point now under consideration is concerned, is but a re-statement of *Davis Coal Co.* v. *Polland,* 158 Ind. 607, 62 N. E. 492, 92 Am. St. Rep. 319, a leading case on the subject. Some of the disparity in the cases may be accounted for by the difference in the wording of the various statutes, but, after making all due allowance for this fact, there still remains a great lack of harmony among the authorities on the question whether or not the field of defenses open to employers of labor has been narrowed by the legislatures in those jurisdic-

tions where employers' liability acts have been enacted. By an act of Congress, the use of automatic couplings, on all cars engaged in interstate business, is made compulsory, and it is expressly provided that employees shall not be deemed to have assumed the risk occasioned by the employer's failure to comply with the act. U. S. Comp. St. 1901, Vol. 3, p. 3176. Much unnecessary litigation would be saved if the state legislatures would incorporate a similar provision into their liability acts. A number of late cases involving the question now under consideration have been noted and discussed in these pages during the current year. See 4 MICH. LAW REV., pp. 165, 241, 487.

MASTER AND SERVANT—SERVANT INJURED BY SOMETHING HIS DUTY REQUIRES HIM TO INSPECT.—A railroad station agent was injured by falling into an excavation and against a derailing switch which had been constructed on his own premises without his consent, he supposing they were upon the company's premises. It was the duty of the plaintiff to keep the station grounds in proper condition for the comfort and convenience of passengers. The defendant had notified him of the completion of the switch, though as it was a derailing switch he was not supposed to keep it lighted. *Held,* that the defendant had committed a trespass, but it became the plaintiff's duty upon notification to inspect it, and if he failed to do so he cannot recover for his injuries. *Wood* v. *New York Central & H. R. R. Co.* (1906), — N. Y. —, 77 N. E. Rep. 27.

There is a strong dissenting opinion in the case by Chase, J., which is concurred in by two of his associates. However, the case really turns on the question whether it was the plaintiff's duty in fact to inspect the switch, and Judge Chase contends that it is not shown but what the grounds were in proper condition for patrons and that the switch was safe for trains. He then goes on to argue that even if under the circumstances the plaintiff failed to remember for the moment, though he in fact knew that work had been performed, that would suggest special care on his part while proceeding in the darkness after arriving thereon, he was not guilty of contributory negligence as a matter of law, and cites *Weed* v. *Villiage,* 76 N. Y. 329; *Dollard* v. *Roberts,* 130 N. Y. 269, 29 N. E. 104, 14 L. R. A. 238; *Kaiser* v. *Washburn,* 55 App. Div. 159, 66 N. Y. Supp. 764; but these are all cases in which the plaintiff was a stranger with no duty to inspect, and the majority specifically admit that were the plaintiff a stranger to the company he could recover in the present instance. But as pointed out in the majority opinion, the grounds were in a perfect condition and the switch was in a safe condition for the operation of trains, and it would not seem that the mere fact that plaintiff was employed by the defendant should bar his recovery. However, the proposition laid down in the majority opinion that if anyone is injured through a failure to inspect something which it is his duty to inspect he cannot recover for the injuries, is well settled. 1 LABATT, MASTER AND SERVANT, §416, and cases cited; also, *Penn. Co.* v. *Congdon,* 134 Ind. 226.

PATENTS—CONTRACTS—ROYALTIES.—Defendant acquired the right to manufacture and sell plaintiff's patented article (a kind of metal basket) during the life of the patent, but failed to pay the royalties under the contract;